

# WORLD TRADE ORGANIZATION

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Committee on Customs Valuation

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## NOTIFICATION UNDER ARTICLE 22 OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

TUNISIA

The following communication, dated 10 May 2011, is being circulated at the request of the delegation of Tunisia.

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The Permanent Mission of Tunisia has the honour to provide the World Trade Organization with a copy of the Ministry of Finance Order of 28 January 2009 establishing the requirements for implementing Articles 22 to 35 of the Customs Code.

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Ministry of Finance Order of 28 January 2009 establishing the requirements for implementing Articles 22 to 35 of the Customs Code

The Minister of Finance,

- Having regard to the Customs Code, as promulgated by Law No. 34-2008 of 2 June 2008, in particular Article 36 thereof;
- having regard to the Ministry of Finance Order dated 19 October 2001 establishing the requirements for implementing Articles 26 to 26 *terdecies* of the Customs Code promulgated under the Beylical Decree of 29 December 1955 reforming and codifying customs legislation;

Hereby decides the following:

### General

#### Article 1

For the purpose of applying Article 23 of the Customs Code, the following transactions shall not be considered sales:

- Free consignments, such as gifts, samples, promotion items;

- goods imported on consignment, dispatched to Tunisia not as a result of a sale, but with the intention that they would be sold in Tunisia for the account of the supplier at the best price obtainable;
- goods imported by intermediaries who do not purchase the goods and who sell them after importation;
- goods imported by branches which are not separate legal entities;
- goods imported under a hire or leasing contract;
- goods supplied on loan which remain the property of the sender;
- waste or scrap imported for destruction in Tunisian territory.

## **Article 2**

Charges for interest under a financing arrangement entered into by the importer and relating to the purchase of imported goods shall not be regarded as part of the customs value provided that:

- The charges are distinguished from the price actually paid or payable for the goods imported;
- the financing arrangement was made in writing;
- where required, the buyer can demonstrate that:
  - such goods are actually sold at the price declared as the price actually paid or payable, and;
  - the rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

The provisions of this Article shall apply where the finance is provided by the seller, a banking institution or another natural or legal person. They shall also apply, if appropriate, where imported goods are valued under a method other than the transaction value.

## **Article 3**

For the purposes of determining, under Article 23 of the Customs Code, the customs value of goods in regard to which the price has not actually been paid at the material time for valuation for customs purposes, the price payable for settlement at the said time shall be taken as the basis for customs value.

## **Article 4**

Where goods declared to customs are part of a larger quantity of the same goods purchased in one transaction, the price actually paid or payable for the purposes of Article 23(1) of the Customs Code shall be that price represented by the proportion of the total price which the quantity so declared bears to the total quantity purchased.

Apportioning the price actually paid or payable shall also apply in the case of the loss of part of a consignment or when the goods being valued have been damaged before release for consumption.

**Article 5**

Where the price actually paid or payable for the purposes of Article 23(1) of the Customs Code includes an amount in respect of any internal tax applicable within the country of origin or export to the goods in question, the said amount shall not be incorporated in the customs value provided that it can be demonstrated to the satisfaction of the customs services concerned that the goods in question have been or will be relieved therefrom.

**Article 6**

Where, in applying Article 23 of the Customs Code, it is established that the sale or price of imported goods is subject to a condition or consideration the value of which can be determined with respect to the goods being valued, such value shall be regarded as an indirect payment by the buyer to the seller and part of the price actually paid or payable provided that the condition or consideration does not relate to either:

- (a) An activity to which Article 23(3)(b) of the Customs Code applies; or,
- (b) a factor in respect of which an addition is to be made to the price actually paid or payable under the provisions of Article 30 of the Customs Code.

**Article 7**

1. For the purpose of applying Article 23(3)(b) of the Customs Code, the term 'marketing activities' shall mean all activities relating to advertising and promoting the sale of the goods in question and all activities relating to warranties or guarantees in respect of them.

2. Such activities undertaken by the buyer shall be regarded as having been undertaken on his own account even if they are performed in pursuance of an obligation on the buyer following an agreement with the seller.

**Article 8**

For the purpose of applying Article 27(1)(b) of the Customs Code, the 'earliest date' shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

**Article 9**

Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the customs services shall inform the declarant, if the latter so requests, of the source of such information, the data used and the calculations based on such data, subject to Article 34(2) of the Customs Code.

**Article 10**

Where containers referred to in Article 30(1)(a)(ii) of the Customs Code are to be the subject of repeated importations, their cost shall, at the request of the declarant, be apportioned as appropriate, in accordance with accepted accounting principles.

## **Article 11**

For the purpose of applying Article 30 of the Customs Code, the cost of research and preliminary design sketches is not to be included in the customs value.

### **Provisions Concerning Royalties and Licence Fees**

## **Article 12**

1. For the purpose of applying Article 30(1)(c) of the Customs Code, royalties and licence fees shall be taken to mean in particular payment for the use of rights relating to:

- The manufacture of imported goods (in particular patents, designs, models and manufacturing know-how);
- the sale for exportation of imported goods (in particular trademarks and registered designs);
- the use or resale of imported goods (in particular copyright and manufacturing processes inseparably embodied in the imported goods).

2. Without prejudice to Article 30(4) of the Customs Code, when the customs value of imported goods is determined under the provisions of Article 23 of the said Code, a royalty or licence fee shall be added to the price actually paid or payable only when this payment:

- Is related to the goods being valued; and
- constitutes a condition of sale of those goods.

## **Article 13**

1. When the imported goods are only an input or component of goods manufactured in Tunisia, an adjustment to the price actually paid or payable for the imported goods shall only be made when the royalty or licence fee relates to those goods.

2. Where goods are imported in an unassembled state or only have to undergo minor processing before resale, such as dilution, assembly or packing, this shall not prevent a royalty or licence fee from being considered related to the imported goods.

3. If royalties or licence fees relate partly to the imported goods and partly to other inputs or component parts added to the goods after their importation, or to post-importation activities or services, an appropriate apportionment shall be made only on the basis of objective and quantifiable data.

## **Article 14**

A royalty or licence fee in respect of the right to use a trade mark is only to be added to the price actually paid or payable for the imported goods where:

- The royalty or licence fee refers to goods which are resold in the same state or which are subject only to minor processing after importation;
- the goods are marketed under the trade mark, affixed before or after importation, for which the royalty or licence fee is paid; and

- the buyer is not free to obtain such goods from other suppliers unrelated to the seller.

### **Article 15**

1. When the buyer pays royalties or licence fees to a third party, the conditions provided for in Article 10(2) of this Order shall not be considered as met unless the seller or a person related to him requires the buyer to make that payment.
2. Where the method of calculation of the amount of a royalty or licence fee derives from the price of the imported goods, it may be assumed in the absence of evidence to the contrary that the payment of that royalty or licence fee is related to the goods to be valued.
3. However, where the amount of a royalty or licence fee is calculated regardless of the price of the imported goods, the payment of that royalty or licence fee may nevertheless be related to the goods to be valued.

### **Article 16**

For the purpose of applying Article 30(1)(c) of the Customs Code, the country of residence of the recipient of the payment of the royalty or licence fee shall not be a material consideration.

### **Provisions Concerning the Place of Introduction into Tunisia**

### **Article 17**

For the purpose of applying Article 30(1)(e) and Article 31(a) of the Customs Code, the place of introduction into the customs territory of Tunisia shall be:

- (a) For goods carried by sea, the port of unloading or the port of transshipment, subject to transshipment being authorized by the customs services of that port,
- (b) for goods carried by rail or road, the place where the first customs office is situated,
- (c) for goods carried by air, the first arrival airport in the customs territory of Tunisia,
- (d) for goods carried by other means, the place where the land frontier of the customs territory of Tunisia is crossed.

### **Provisions Concerning Transport Costs**

### **Article 18**

For the purpose of applying Article 30(1)(e) and Article 31(a) of the Customs Code:

- (a) Where goods are carried by the same mode of transport to a point beyond the place of introduction into the customs territory of Tunisia, transport costs shall be assessed in proportion to the distance covered outside and inside the customs territory of Tunisia, unless evidence is produced to the customs services to show the costs that would have been incurred under a general compulsory schedule of freight rates for the carriage of the goods to the place of introduction into the customs territory of Tunisia;
- (b) where goods are invoiced at a uniform free-domicile price which corresponds to the price at the place of introduction, transport costs within Tunisia shall not be deducted from that price. However, such deduction shall be allowed if evidence is produced to

the customs services that the free-frontier price would be lower than the uniform free-domicile price;

- (c) where transport is free or provided by the buyer, transport costs to the place of introduction in the customs territory, calculated in accordance with the schedule of freight rates normally applied for the same modes of transport, shall be included in the customs value.

#### **Article 19**

1. All postal charges levied up to the place of destination in respect of goods sent by post shall be included in the customs value of these goods, with the exception of any supplementary postal charge levied in Tunisia.

2. No adjustment to the declared value shall, however, be made in respect of the inclusion of such charges when determining the value of consignments of a non-commercial nature.

3. The provisions set out in paragraphs 1 and 2 of this Article are not applicable to goods carried by the express postal services.

#### **Declaration of Elements Determining Customs Value**

#### **Article 20**

1. Where a customs value is established under Articles 23, 25 or 26 of the Customs Code, a "declaration of elements determining customs value" shall accompany the customs entry made in respect of the imported goods. This value declaration shall be drawn up on a form corresponding to the format and specifications of the official model in the possession of the Directorate-General of Customs.

- A copy of this model has been published in the Official Customs Journal;
- the model has been filed with regional directorates and customs offices and with chambers of commerce and industry.
- the declaration must be accompanied where appropriate by one or several copies of the model on page 2 of this form.

2. The declaration of elements determining customs value provided for in paragraph 1 above shall be made by a person authorized to furnish a detailed declaration of the goods in accordance with Articles 101 to 109 of the Customs Code.

3. The customs services may waive the requirement of a declaration on the form referred to in paragraph 1 above where the customs value of the goods in question cannot be determined under the provisions of Article 23 of the Customs Code.

In such cases, the person referred to in paragraph 2 of this Article shall furnish or cause to be furnished to the customs services such other information as may be requested for the purposes of determining the customs value under another Article of the said Code; and such other information shall be supplied in such form and manner as may be prescribed by the customs services.

4. The lodging with a customs office of a declaration required by paragraph 1 above shall, without prejudice to the penal provisions in the legislation in force, be equivalent to the engagement of responsibility by the person referred to in paragraph 2 of this Article in respect of:

- The accuracy and completeness of the particulars given in the declaration;
- the authenticity of the documents produced in support of these particulars.

It shall also be equivalent to the commitment by the said person to supply any additional information or document necessary to establish the customs value of the goods in question.

#### **Article 21**

Except where the declaration provided for in Article 20(1) above is essential for the correct application of import duties and taxes, the customs services may waive the requirement of all or part of the information contained in the declaration provided for in Article 18(1) above, in particular:

- (a) Where the customs value of the imported goods in a consignment does not exceed 1,000 dinars, provided that they do not constitute split or multiple consignments from the same consignor to the same consignee;
- (b) where the importations involved are of a non-commercial nature;
- (c) where the submission of the particulars in question is not necessary for the application of the Customs Tariff or where the customs duties provided for in the Tariff are not chargeable pursuant to specific customs provisions;
- (d) where the goods imported are valued on the basis of administrative prices in accordance with the legal provisions in force;
- (e) perishable goods, where existing regulations provide for other methods of establishing the value of these goods;
- (f) where the goods are imported by travellers;
- (g) where the goods imported are used or second-hand.

#### **Article 22**

The person referred to in Article 20(2) of this Order shall furnish the customs services with a copy of the invoice and of the documents on the basis of which the elements determining the customs value of the imported goods have been declared.

#### **Article 23**

The Ministry of Finance Order of 19 October 2001 establishing the requirements for implementing Articles 26 to 26 *terdecies* of the Customs Code is hereby repealed.

#### **Article 24**

This Order shall be published in the Official Journal of the Tunisian Republic.

Tunis, 28 January 2009

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